No. 18-9127

IN THE
SUPREME COURT OF THE UNITED STATES

KATHLEEN C. HAMPTON,
Petitioner,

v.

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP; FANNIE MAE, INVESTOR; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AKA "MERS;" COUNTRYWIDE HOME LOANS, INC., A NEW YORK CORPORATION DBA AMERICA'S WHOLESALE LENDER; AND DOES 1 THROUGH 100 INCLUSIVELY
And
FAY SERVICING, LLC, AS SERVICING AGENT AND ATTORNEY-IN-FACT FOR PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE; AND SAMUEL I. WHITE, P.C., AS ORIGINAL AND SUBSTITUTE TRUSTEE
Respondents.

On Petition for Writ of Certiorari to the
The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Virginia courts have violated the constitutional standards of due process and equal protection? And have the trial courts entertained the suit and *determined the truth* of the allegations?

Is it not the federal government, the states, and the courts of all levels, tasked with the daunting task of protecting the property rights of citizens from theft, conversion, fraud, and otherwise unlawful "takings"?

Just how much evidence is enough to show a clear proof of "wrongful and negligent behavior," when the OCC/US Treasury have already accepted Petitioner's treatment by BANA as "wrongful and negligent," mandating remedies?

Is there anything in a DOT that would allow a Lender, or one acting as such, to auction off any loan to a hedgefund without having foreclosed on it first? Or is it legal to conceal the same and foreclose in the name of a non-holder?

Or should any auction of Petitioner's loan had taken place without fulfilling the remedies of the "Consent Orders" (IFR) with the OCC/US Treasury?

How can sustaining a demurrer and plea in bar equal due process where no fair trial occurred, where fraud was evident in the exhibits ... even if not well plead?

Can MERs assign a note when they are only a nominee to a DOT? Would such an Assignment be valid?

Would a wrongful description of a Property, requiring a "Corrective Affidavit," hold a Deed invalid?

PARTIES TO THE PROCEEDING

PETITIONER, KATHLEEN C. HAMPTON, an individual natural person, citizen of the United States and the Commonwealth of Virginia, is acting pro se, is not an attorney and has had very minimal contact with the legal system prior to this action. Ms. Hampton was plaintiff in the Loudoun County Circuit Court and Appellant in the Supreme Court of Virginia.

RESPONDENTS, PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP; FANNIE MAE, INVESTOR; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AKA "MERS;" COUNTRYWIDE HOME LOANS, INC., A NEW YORK CORPORATION DBA AMERICA'S WHOLESALE LENDER; AND DOES 1 THROUGH 100 INCLUSIVELY And FAY SERVICING, LLC, AS SERVICING AGENT AND ATTORNEY-IN-FACT FOR PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE; AND SAMUEL I. WHITE, P.C., AS ORIGINAL AND SUBSTITUTE TRUSTEE, were the defendants in the Loudoun County Circuit Court and Appellees in the Supreme Court of Virginia.

CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Supreme Court Rule 29.6, Petitioner Kathleen C. Hampton is an individual with no corporate affiliation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kathleen C. Hampton, *pro se*, respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia.

OPINIONS BELOW

Circuit Court of Loudoun County *Amended Final Order* dated March 30, 2018, adding PROF-2013-S3 Legal Title Trust, by US Bank National Association, as Legal Title Trustee as a separate party defendant to the relief awarded in the Court's previously-entered January 3, 2017, *Order* [unpublished] (App. A)

Supreme Court of Virginia (Record No. 180842) Opinion there is no reversible error in the judgment complained of and Refused the *Petition for Appeal* dated November 9, 2018 [unpublished] (App. B)

Supreme Court of Virginia (Record No. 180842) Denial of the *Petition for Rehearing* dated February 1, 2019 [unpublished] (App. C)

Circuit Court of Loudoun County *Final Orders* dated January 3, 2017, sustaining with prejudice the *Demurrers* and *Plea in Bar* to Plaintiff's *Second Amended Complaint* [unpublished] (App. D)

Circuit Court of Loudoun County *Order* dated January 11, 2017, denying Plaintiff's *Motion for Reconsideration* [unpublished] (App. E)

Supreme Court of Virginia (Record No. 170427) Dismissal without Prejudice, finding that the order appealed from is not a final, appealable order as it is not final with regard to all the parties in the case, namely PROF-2013-S3 Legal Title Trust, by US Bank National Association dated August 14, 2017 [unpublished] (App. F)

Supreme Court of Virginia (Record No. 170427) Denial of the *Petition for Rehearing* dated November 21, 2017 [unpublished] (App. G)

Circuit Court of Loudoun County *Order* dated August 3, 2016, sustaining the *Demurrers* as to all counts and permitting Plaintiff to file *Second Amended Complaint* [unpublished] (App. H)

Circuit Court of Loudoun County *Order* dated July 1, 2016, denying Plaintiff's *Application for Entry of Default and Default Judgment* [unpublished] (App. I)

US District Court for the Eastern District of Virginia (No. 1:15-cv-1624-LMB-MSN) *Order* dated May 18, 2016, Dismissing without Prejudice pursuant to FRCP 41(a)(1) [unpublished] (App. J)

US District Court for the Eastern District of Virginia (No. 1:15-cv-1624-LMB-MSN) *Order* dated May 17, 2016, cancelling the hearing scheduled for Friday, May 20, 2016 [unpublished] (App. K)

US District Court for the Eastern District of Virginia (No. 1:15-cv-1624-LMB-MSN) *Order Granting Motion to Continue*, dated March 21, 2016, cancelling the previously scheduled hearing [unpublished] (App. L)

US District Court for the Eastern District of Virginia (No. 1:15-cv-1624-LMB-MSN) *Order* dated March 14, 2016, Denying Plaintiff's *Opposition to Motion to Dismiss* and further Ordering Defendants to provide evidence of Property Foreclosed on in any Reply to Plaintiff's *Opposition* [unpublished] (App. M)

STATEMENT OF JURISDICTION

The judgment of The Supreme Court of Virginia on a *Petition for Rehearing* was entered on February 1, 2019. (App. C)

The judgment of The Supreme Court of Virginia on the *Petition for Appeal* was entered on November 9, 2018. (App. B)

This Court's jurisdiction is invoked under 28 U.S.C. §§1257(a) and 2101(c). This petition was timely filed within ninety days after the judgment on the *Petition for Rehearing*.

Pursuant to U.S. Supreme Court Rules 14.1(e)(v) and 29.4(c), this petition draws into question the constitutionality of the process not the constitutionality of a state statute unless the statutes define the process. Rule 29.4(c) does not appear to apply. However, as 28 U.S.C. §2403(b) may apply, a copy of the petition has been served on the State Attorney General.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are set forth in the Appendix to this petition (App. N).

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This case began with the sale of the Property on July 28, 2005, for which America's Wholesale Lender/Countrywide Home Loans, Inc. (CW) sold Petitioner two Predatory loans (a first [$300,000] and second equity [$75,000] mortgage loan, with loan payments of $3,000/mo.) and violated VA Code Sec. 159.1-200 entitled "Prohibited Practices" re deception, fraud, etc. with Consumer Transactions as well as fraud in the inducement, and the same has been admitted to in various settlements, perhaps more particularly in the historic Justice Department settlement for financial fraud leading up to and during the financial crisis, where Bank of America, NA (BANA), CW's successor, had to pay nearly $17 Billion.

On June 9, 2006, CW induced Petitioner and once again sold her a Predatory loan and committed fraud in the inducement through their misrepresentations of the loan product, as a refinance of those earlier loans in 2005. Further to this they altered the Deed of Trust (DOT) (alleged to be *void ab initio*) after her signing of it to conceal the terms of the refinance loan, as well as violated TILA/RESPA/ Rescission by failure to provide those documents, and still further altered the DOT's Property Description from that already corrected in 2005.

Just prior to that Predatory refinance, and as identified as Exhibit 5 to Petitioner's Complaint, is the Corporation Assignment of Deed of Trust, which is

clearly a fraudulent document filed by CW on May 25, 2006 (just prior to settlement on June 9, 2006), on the Loudoun County Recorder of Deeds records a transfer to Household Realty Corporation of Virginia, at an address in Illinois (not HSBC Mortgage Corporation as indicated in Exh. 5-A, advising of change of servicer) claiming it had transferred the year before the 2nd loan note for $75,000, and dated 7/28/05, and further having a signature date on **August 4, 2005**, before the corrected DOTs were filed on October 17, 2005, but using that instrument no. **20051017-**0116775 filed on **10/17/05** (the date of the corrected DOTs) and including the initial description of the Property, which was corrected at that later October date. **How can one not see that this was a fraudulent document, where clearly the signer could not predict on August 4, 2005, that a Corrected Deed would be required and filed on October 17, 2005, more than two months later?**

Exhibit 6-A, the Deed of Trust, together with Fixed/Adjustable Rate Rider, does not spell out and in fact hides the real terms of this Interest Only Adjustable Rate Note, which was designed as never affordable and clearly is a Predatory loan.

A clear alteration of the Deed of Trust can be seen from comparing the first page of Exhibit 6-A with the first page of Exhibit 6-B (only page submitted to the courts) which is Petitioner's unaltered copy from the settlement package that Petitioner signed. Petitioner believed at the time of signing this DOT that those numbers regarding refinance of the prior DOTs specifics would be filled in before recordation of this re-finance. This alteration by CW was not discovered until 2015 when BANA made one (of six) "last final attempt of foreclosure," which was barred

by Petitioner's Chapter 13 filing with the Bankruptcy Courts. Obviously, CW struck out/"altered" that portion of the DOT (2006) to conceal the terms of the refinance loan to which CW was not entitled to a prepayment penalty on an "in-house re-finance" and from the preceding exhibits had staged the transfer with HSBC to cause further confusion and conceal their wrongdoing causing an increase of $16,800 on the new predatory loan of $391,800 at $2,500/mo.

It can also be seen from page 13 of the DOT of 2006 that further alteration of the Property description occurred, where the property description is to be verbatim to the record, that being the description of the prior Re-recorded Deed and DOTs corrections of October 2005. It should also be noted here that on that page 13 of the DOT, the Schedule A (description of the Property) was absent at Settlement as noted Petitioner's initials do not appear on it. Had it been provided at Settlement, Petitioner might have noticed that it was wrong; but again it was not until May of 2015, upon notice of foreclosure and/or Trustee Sale, that Petitioner discovered the description to be incorrect, particularly after Petitioner conducted her own title search. Thereafter, Petitioner contacted her Title Insurance Company to arrange to fix this major "Cloud on Title," which could only be accomplished via a "Corrective Affidavit" approved by Petitioner and the Trustee to the DOT, that being Samuel I. White (SIW), Original Trustee thereto.

It is interesting to note here that sometime during this later loan transaction, as discovered from a Bloomberg Audit conducted in January of 2015, Petitioner's loan apparently was pooled into the REMIC-2006-67 pooling and servicing

agreement under Fannie Mae sometime around June of 2006. CW never identified, nor had Petitioner requested to know, nor did she know to ask for any identification of any investors, since as a first-time buyer, she was naïve as to such matters.

While still under the control of CW, Petitioner had attempted several times, since the housing crash, to obtain a modification, as the same was being offered under Hope, HARP, and other programs set up in 2007-2008. Petitioner was denied the modification since the appraisal came in too low. However, CW offered a refinance under the same modification terms, if she brought $8,000 to the settlement table. Petitioner's understanding when she first applied for the modification was that the appraisal had "no effect" on the modification, since it was designed to help out struggling borrowers and, of course, the terms would be better than the existing loan and did not require refinancing fees. Petitioner knew CW was wrong to even offer the refinance and deny the modification under the same terms – CW reneged on their original offer in April of 2008.

In an effort to encourage CW to extend that modification, Petitioner offered up information regarding interested parties to her Property, and it is her belief that her information was sold thereafter to one or both of those parties, who may have become investors thereafter. As can be seen in Exhibit 7, Countrywide Office of the President's letter of September 6, 2008 (just five months after negotiations ended with CW's denial of the modification), gave notice that Petitioner's personal loan information had been sold, that the party selling the information had been fired and was no longer at their employ. Petitioner has always believed that this sale of her

information, to a potential investor, constituted a clear Breach of Contract (re "duty of care") – CW was the first to Breach her Mortgage Contract and the DOT. **Shouldn't our laws protect consumers from such behavior and failed duty of care?**

BOA took over Petitioner's loan in April of 2009, without CW giving any notice as to change of servicer (as required by the DOT), and, in fact, to the contrary, in March CW advised that CW "was" the servicer of her loan.

Petitioner learned of the HAMP Act enacted on her birthday March 4, 2009, and immediately began application for the same, particularly as she began to get behind on her mortgage payments, which seemed a requirement with BOA.

As qualification to the HAMP, Petitioner submitted on July 27, 2009, her letter to the Retention Department (faxed thereto), which included in the body of the letter, her Hardship Letter, together with a number of documents that they required to finish her application for the HAMP modification. The HAMP required hardships and, although only one hardship was required, Petitioner had all of them. This letter identified as Exhibit 12, and noted on pages 2 and 3 thereof, show the Section 6 – Current Expenses (part of her proposed bankruptcy papers that BOA said she needed to file) and they also show her income and her workup per "**Making Homes Affordable.**" From a review of those figures and what the Retention Department had worked up under **HAMP** was going to create a new loan modification in the approximate amount of $1,500/month, making it "**affordable**" and, per those documents provided, Petitioner was informed on July 29, 2009, that she was approved and her HAMP Trial Payment Package would be sent out shortly.

BANA never solicited or offered Petitioner anything under the HAMP and instead only offered payment plans of those traditional or "bogus" modifications that were "unaffordable" under any terms, certainly not the HAMP that Fannie Mae (the investor) had mandated they solicit. BANA's first such offer of a Fannie Mae streamlined payment plan for a "traditional" modification occurred two days after Petitioner's HAMP approval.

Following discharge from Bankruptcy in April 2010, and BOA's failure to re-affirm with a modification under the HAMP, Petitioner continued to work for the HAMP modification and by the end of 2010 with the help of John Pontino, BOA's Loss Mitigation Specialist, a HAMP modification was worked up and sent to underwriting to finalize and her HAMP Trial Payment Program would be forthcoming as can be seen in Exhibit 20. This was the second time Petitioner was approved for the HAMP modification, but as can be seen in Exhibit 23, BOA denied her claiming excessive forbearance re investor, where Fannie Mae made no decisions on HAMP modification packages, and John Pontino had worked it out under the HAMP. At that time, BOA was refusing the HAMP, not the investor Fannie Mae. Under the HAMP approval (July 29, 2009), there were no subsequent original payments due and the HAMP Trial Payments, which should have been extended at that time, were to be applied to the new HAMP modification loan. Also, all modifications were to convert to fixed amounts as opposed to the Interest Only ARMs of banks' prior predatory lending loans. **I lived in my home for ten years before the 2005 sale and have waited for ten more years for my HAMP modification.**

Also, at the end of 2010, BOA attempted their first foreclosure, which Petitioner was able to stop through her letter to Shapiro, et al. re the HAMP modification being in process. And with it moving into underwriting, she should receive her HAMP Trial Payment Program shortly. And, within three months of making those trial payments showing she could afford the same, she would receive her permanent HAMP modification. **It was BOA's failure to provide the HAMP modification as approved July 29, 2009, and this first attempt at foreclosure that qualified Petitioner under the Independent Foreclosure Review.**

So while under the control of Bank of America (NA or otherwise), six attempts to foreclose had been made. The 1st one in Nov/Dec of 2010, identified above, while Petitioner's HAMP modification was being handled and completed with BOA's Loss Mitigation Specialists, and that attempt was what the Independent Foreclosure Review (IFR) Program had determined made her eligible for the highest payout for non-foreclosure cases, and by the IFR Guidelines thereto, **BOA should have offered the HAMP modification retro to her 1st approval date of July 29, 2009, in addition to still other remedies.**

Further, as can be seen in Exhibit 27, in March of 2012, came the Notice of Assignment of DOT from Countrywide to BOA, signed by MERS, who has no interest but yet "For value received ... assigns the DOT and the Note (MERS is only a nominee for CW as to the DOT, not the Note) ... to BOA," without any real involvement from Countrywide. Clearly, this assignment was made to pave the way for BOA to conduct foreclosure procedures that followed. **Can this assignment be**

held valid? The Bloomberg Audit conducted did not believe so and neither does Petitioner!

In 2012, beginning in July, BOA attempted to foreclose four times thru December and even while a bankruptcy was ongoing, HAMP modifications ongoing, QWRs ongoing, etc. Exhibit 28-I from Petitioner's Loss Mitigation Specialist Jeff Burch (Burch) dated February 17, 2013, in response to those four attempts of foreclosure, clearly notes all the wrongdoing preceding and including them.

This was the same time period that the IFR had solicited Petitioner, and via application submitted by December 31, 2012, found her eligible, and awarded her the highest financial penalty compensation (early 2013), and Petitioner was to receive other remedies with regard to the above, i.e., the HAMP modification retro to its initial approval date. At no time has BOA ever solicited or offered Petitioner that HAMP modification (enacted on her birthday March 4, 2009). Clear evidence of Petitioner's approval and remedies can be seen in Exhs. 29 – 32. It was at a much later date that Petitioner realized that the $2,000 payment was the highest paid out on a non-foreclosure, since they had to rework the amounts where there was such an overwhelming response to the solicitation.

Following the "Consent Orders" (Independent Foreclosure Review [IFR]) between BANA and the OCC, and Petitioner's inclusion in that settlement (which mandates BANA did not comply with), it would appear that her loan was moved from REMIC-2006-67 into PROF-2013-S3 Legal Title Trust/US Bank NA, the foreclosing "purported" holder of the note, "not secured" by the DOT.

Petitioner also notes here that BANA knew of Petitioner's qualification and solicitation under the IFR and attempted to foreclose four times in six months. It appears to Petitioner that those attempts, which stopped thereafter, were perhaps their attempt to foreclose to avoid the findings and remedies of the IFR. Both BANA and US Bank NA on behalf of their Trusts signed "Consent Orders" (IFR) in 2011 with the OCC/US Treasury and were mandated to fulfill remedies per the findings of the IFR.

Further to those settlements, the National Mortgage Settlement (NMS) followed and had their own "Consent Judgments," which BANA should have known to include Petitioner therein, but BANA, again, never solicited her, where clearly Petitioner was the victim of not one predatory loan, but three! Here again, it is interesting to note that this settlement also occurred right before that time period where the REMIC seemed to move into PROF, whose closing date had to be within 90 days somewhere during 2013.

Also of further interest is the $18 Billion Settlement between DOJ and Fannie Mae vs. BOA/BANA where the investors were paid off. This is precisely why Discovery should have prevailed as Petitioner's loan could have been one of those included in that settlement and could have determined that this new Trust PROF establishes a "double dipping" on BANA's part, or even Fannie Mae's part. This information should be made public and so should have the National Mortgage Settlement. In Petitioner's review of that settlement, she could only find a listing of 62 cases that BANA determined predatory for the 2005 - 2007 period in the state of

Virginia – **which seems outrageous given these predatory loans climaxed in the crash of our economy.**

Further, after Petitioner's approval with the IFR, she had filed complaints with President Obama in April 2014, which was referred to the main office of Consumer Financial Protection Bureau (Consumers), in further attempt to get BANA to comply with the IFR Guidelines. At that time, she did not know there was a "Consent Order" (IFR) with which BOA had to comply and included under the IFR Guidelines.

By mid-January 2015, both Petitioner and her Loss Mitigation Specialist Burch (since 2011), realizing that BANA was not going to offer anything but a "bogus, unaffordable modification payment plan, not a HAMP," which Petitioner could not even qualify for under any terms, and without even listing those terms, she authorized Burch to have conducted the Bloomberg Audit of her account, which uncovered still further wrongdoing on the part of CW/BOA/BANA, the Highlights of which were part of Petitioner's subsequent Amended Complaints. Once the audit was finished, it was provided to David Angello (BANA), in an effort, to compel a workout, as promised, and as had been previously proposed, but the same fell on deaf ears. Thereafter, BANA instructed Wittstadt Title to conduct a foreclosure without first complying with their "Consent Order."

Finally, without notice from BANA, BANA sold Petitioner's loan to PRMF Acquisition, a hedgefund, at auction, on June 19, 2015, and only advised Petitioner that servicing had changed to Fay Servicing as of the 1st of August 2015. Fay

notified Petitioner that the loan was sold on that date to PROF, which Petitioner knew had to be false since all trusts must have all loans into the trust within 90 days of the closing date – sometime in 2013! **Clearly, there is nothing in the DOT that would allow a Lender, or one acting as such, to auction off any loan without having foreclosed on it first. Nor should any auction of Petitioner's loan had taken place without fulfilling the remedies of the "Consent Orders" (IFR).**

Also, with BANA turning over servicing to Fay and Fay acting on behalf of PROF/US Bank, concealing true sale to PRMF Acquisitions (a hedgefund), US Bank on behalf of PROF also did not comply with their "Consent Order" (IFR), nor have they even acknowledged the same in court or otherwise. And instead of Fay, their attorney-in-fact, "boarding" the loan and working out anything under their "Consent Order," they proceeded with foreclosure, and, accordingly, Petitioner filed her first complaint in the US District Court, Alexandria Division, on December 4, 2015, to stop the foreclosure of December 7, 2015.

Samuel I. White, Trustee (SIW) proceeded with the "wrongful" foreclosure, despite the fact that Petitioner had filed that case, and in violation of the DOT to give notice regarding the same; despite HUD regulations; despite Burch's Cease & Desist and Highlights of the Bloomberg Audit; despite the "Consent Orders" (IFR); and despite the "Cloud on Title" on the property description requiring a "Corrective Affidavit," all of which SIW was well aware of. Following the foreclosure of December 7, 2015, Petitioner filed her state case on December 11, 2015, together with a *Lis Pendens*, in an effort to stop any further actions.

Petitioner herein has given clear evidence/exhibits to everything in her Complaint, but could still offer up more proof/evidence. **Just how much evidence is enough to show a clear proof of "wrongful and negligent behavior," when the OCC/US Treasury have already accepted Petitioner's treatment by BANA and US Trust on behalf of PROF (including Fay as servicer and attorney in fact or SIW as Trustee to the DOT) as "wrongful and negligent"?**

Following the filing of suits, and in an effort to compel compliance with the remedies of the IFR, and having learned that Petitioner could make Complaint with the OCC, she did so. Unfortunately, BANA and Fay on Behalf of US Bank never owned up to anything to do with "Consent Orders," and in BANA's response to Petitioner's Complaint, which was referred to Consumers, once again, they have only presumed those "Consent Orders" to be a part of the "Consent Judgments" in the National Mortgage Settlement (NMS), which Petitioner should have been solicited for and BANA claims Petitioner has no right to a suit therein.

Also post foreclosure, as can be seen in Exhibit 56, the Assignment of the DOT from BANA to PROF, this filing clearly demonstrates that BANA was not out of the picture as they claimed previously – and **it is Petitioner's belief that this Assignment is invalid, if for no other reason other than the invalid Property Description thereto.** Further to that is #4 from her *Request of Judicial Notices*, which is the Power of Attorney (POA) from BANA to PRMF – not PROF – **which should hold Exhibit 56 still further invalid**, and further BANA had no right to sell to PRMF at auction as is noted in this POA.

Still further is Exhibit 57, showing that Fay had authorized Auctions-on-line that ran continuously for a year and half and brought further attention to Petitioner, which should be considered an act of extortion against her property, her reputation, and her physical, mental and financial well being, especially as an elderly woman living alone. Exhibit 58, Form 1099-A that Fay filed as Lender with the IRS claims Acquisition or Abandonment of Secured Property, which is clearly false since Petitioner is still residing in her home and defending her Constitutional Rights against the unlawful taking by those who are not entitled to take.

Still further is Exhibit 60, the Deed of Foreclosure (DOF), which again bears the wrong description to the Property which must be stated verbatim to the DOT, which is still incorrect and needs to be corrected with a "Corrective Affidavit" going back to the original sale of the property to Petitioner and approved by her. Such affidavit has never been approved and filed with the Recorder of Deeds to date. **How can any Deed be held valid when it conveys an incorrect description of the Property?**

PROCEDURAL BACKGROUND

In May of 2016, after a free consultation with an attorney with expertise in this field, and upon advice to combine her US District court case with the Circuit Court case, Petitioner had dismissed without prejudice under Rule 41(a) her US District Court case (App. J) to combine the same with the Circuit Court case *Second Amended Complaint*, and particularly since Defendants had complained about the dual suits. Clearly the dual suits would not have been necessary had PROF/Fay/SIW not continued with foreclosure. It was never Petitioner's intent to

file multiple suits and doing so placed a bigger burden on Petitioner than that of attorneys who are appearing in courts as a daily part of their work. Also Petitioner had filed in the US District Court initially for the Federal violations contained in her Complaint and believed that they could issue a Temporary Restraining Order (TRO) as requested therein. It was not until she filed that initial Complaint that she was informed by the US District Court that they did not do TRO, and thus her *Amended Complaint* therein. Petitioner knew she would need to amend, since she was rushed to file something with the courts, particularly since SIW choose to give Notice of the Trustee Sale right before the Thanksgiving Holidays, giving Petitioner only seven and one-half days to file suit, and with publication of the sale appearing before Petitioner received her notice. **Can this really be considered fair Notice?**

I should also note here that PROF/US Bank, the main Defendant in all of Petitioner's cases, never made appearance, nor filed their Financial Interest Disclosure Statement as required by the US District Court. Petitioner has made several requests of all the courts to compel PROF/US Bank to file the same, with no avail. **Is it fair that this information has been withheld from Petitioner? Does she not have a right to defend herself from the unlawful taking of her Property from someone unknown to her, where a Trustee fails fulfilling all the requirements of the DOT and/or Federal and State requirements, including HUD, as well as ignoring her prior filed suit?**

Also mid-year, and prior to the *Second Amended Complaint*, Petitioner filed Default Judgment against PROF for non-appearance, which the court found to favor

Fay as their attorney in fact. As can be seen from the *Order* of July 1, 2016, Petitioner disagreed with that ruling (App. I).

With regard to Petitioner's pleas for *Request for Judicial Notices* (App. Z), involving Probate Court, where SIW had to file his Accounting for the Foreclosure and where Petitioner's Opposition Letter was directed, whereupon laying eyes on a copy of the Note, Petitioner believed it to be a forged Note and not her signature thereon. In addition, Petitioner examined the POA which SIW used to foreclose with and following her e-mail to Melinda Hetzel, Commissioner of Accounts, dated July 20, 2016, pointing out that it did not include PROF-2013-S3 Legal Title Trust, Ms. Hetzel requested a proper POA. Upon receipt of a copy of that subsequent POA and in response on September 20, 2016, Petitioner noted still questionable characteristics to that POA that would be "unacceptable" for court records filed in Virginia's court system.

Also notable, is that the *Judicial Notices* pled for were not available at the time of filing her *Second Amended Complaint* and the foreclosure had not been approved by Probate Court until right before the hearing of January 3, 2017, wherein her Judicial Notices were submitted, and where Petitioner was deprived of due process rights regarding the same.

Further to this, and as a result of the Commissioner not having the power to invalidate a Deed of Foreclosure (DOF), Petitioner was notified November 4, 2016, by Commissioner's office that the Commissioner had approved the accounting and it was being filed with the Probate Court on that date and Petitioner would have 15

days to file any exceptions. Thereafter, Exceptions were filed on November 19, 2016 (as well as further Exceptions re the accounting on November 23, 2016, which could not be considered since they were a late filing), where again, the Probate Judge and the court not being a court of record, could not invalidate anything either, and after review of Petitioner's exceptions, Ordered the Commissioner's Report confirmed. Noted in that Order: "this Court expresses no opinion as to the correctness and validity of the classifications and amounts set forth ... or similar language on the Account of Sale ... express or implied ... on the Account of Sale." This information filed with Probate Court, including a number of further Exhibits, was also what Petitioner requested in her *Judicial Notices*, which opposing counsel SIW for PROF/US Bank/Fay claimed were merely reiterative. No doubt, they did not want any further evidence being drawn into that case particularly where that evidence could have proven they were not entitled to the remedy of foreclosure and the foreclosure was invalid.

From the transcript of the hearing, on page 4, line 21 through page 5, line 3 (App. X), Trust Defendants question whether Petitioner had filed anything citing a single violation of DOT. It would appear that Defendants had not read the full Complaint, since Plaintiff therein did cite violations of the DOT for improper notices, as well as not complying with all the notices, i.e., HUD regulations, violations of non-compliance with the OCC Consent Orders, as a matter of Federal and State requirements. They continue on page 30, beginning with line 7, questioning again "whether anything stated ... sufficient to equip them to defend

the suit and be on Notice." Plaintiff had therein proffered a Bill of Particulars if they still could find no issue, and the court could have called for the same, but did not, nor did the court address the proffer (App. Y, Plaintiff's notes read at hearing). What Plaintiff could have provided with a Bill of Particulars was a summation of her 154-page Complaint and 264 pages of Exhibits into what she ultimately filed in her first appeal to the Supreme Court of Virginia, consisting of eleven (11) pages. Thereafter, with Appellant's return to the Supreme Court of Virginia, Petitioner filed *Motion for Consideration of the 'Bill of Particulars,' as Proffered* (App. Q), although denied therein (App. P). Plaintiff was not attempting to amend her Complaint therein; she proffered a Bill of Particulars in order to summarize her Complaint, since the Defendants claimed there was nothing therein to defend.

Further to the transcript, page 10, lines 1-3, Trust Defendants state "She should have filed this suit before the sale when seeking to enjoin it or to seek an equitable remedy like rescission." In response (which the court never permitted Plaintiff), clearly Plaintiff did file suit in the US District Court before the foreclosure, which Trust Defendants ignored and proceeded with foreclosure wrongfully. As to the element of Rescission, Plaintiff only pled for Rescission as it related to the OCC Consent Orders and the remedies of the IFR. Further, because PROF is still the holder of the mortgage or purported to be, the remedy of Rescission has always been available under those Consent Orders. This was clearly pled in the Complaint, and it boggles Petitioner's mind that they continue to ignore. This was clearly a "wrongful" foreclosure and Trust Defendants know it.

Petitioner still holds the granting of those *Demurrers* and *Plea in Bar* to be a violation of due process and Petitioner's right to a fair trial. No doubt the attorneys representing the Defendants knew it to be a violation of Petitioner's rights as well.

Apparently, the Circuit Court Judge could find no cause of action, erroneously misunderstood the Complaint and exhibits, and could not find the fraud that was so clear in the exhibits, and Petitioner believes that she may have assumed that the *Second Amended Complaint* (154 pages) was a repeat of the earlier *First Amended Complaint* (132 pages), in addition to the Exhibits thereto (264 pages) and may not have reviewed the *Second Amended Complaint* fully, particularly given the holiday season prior to the hearing of January 3, 2017. It was obvious at the hearing and from the transcript of the hearing January 3, 2017, that the judge was confused as to Predatory Lending, a *void ab initio* DOT, fraud evident in CW's Assignment, and the requirements of a "Corrective Affidavit" to correct the property description, which was still incorrect from that of the re-recorded ones of 2005. Petitioner's case was dismissed on *Demurrers* and *Plea in Bar* with prejudice.

Following those *Orders* of the Circuit Court, Plaintiff filed *Motion for Reconsideration* together with her *Memorandum in Support of Motion for Reconsideration* filed January 10, 2017, particularly since Plaintiff was not allowed a response nor was given an opportunity to argue that "praeciped" for the hearing of her *Request of Judicial Notices.* Said *Motion for Reconsideration* (App. W) was denied the following day on *Order* of January 11, 2017. (App. E)

Thus, Petitioner appealed to the Supreme Court of Virginia for the first time.

Since the first *Orders* of the court did not include PROF, as found by the Supreme Court of Virginia (App. F), Appellant therein filed *Petition for Rehearing* (App. V) as well as *Motion for Consideration* in support thereof (App. U) to explain the Circuit Court's decisions re prior *Default Judgment* (App. I), and both were denied (App. G and App. T, respectively). Thereafter, Appellant therein returned to the Circuit Court for a *Final Order* to include PROF therein and further supported by her *Memorandum in Support of Motion to Amend* (App. S).

The Circuit Court's subsequent *Amended Final Order* (App. A) included PROF as an "added" defendant to that earlier *Order*. But Appellant had *Objections to the Amended Final Order*, and filed the same with the Circuit Court (App. R) and then proceeded to "return" to the Supreme Court of Virginia, once again repeating her *Petition for Appeal*, with a further error as to PROF's representation. Since the added error as to PROF's representation took away space used in her prior Petition for a Bill of Particulars, as Proffered, Appellant offered up further her *Motion for Consideration of the 'Bill of Particulars,' as Proffered* (App. Q), which was thereafter denied (App. P). Further, the Supreme Court of Virginia denied her *Petition for Appeal*, not finding a reversible error in the judgment complained of (App. B) and her further *Petition for Rehearing* was also denied (App. C).

Petitioner admits that she may not be the best at arguing/pleading her case as a pro se plaintiff, but the facts and/or evidence in her case cannot be denied – that is, if properly reviewed along with the Complaint. Petitioner's case at the Supreme Court of Virginia has been denied as to her *Petition for Rehearing* and,

accordingly, is presented here to this Honorable Supreme Court of the United States.

Although BANA claims to have exited with the transfer to Fay, it should be noted here that they sold the loan to PRMF – not PROF – and that PROF/US Bank is a Trust of Fannie Mae (from at least sometime in 2013) and, accordingly, with the subsequent sale back to PROF, not only are the remedies to "Consent Orders" still available, but "Rescission" is in order. Also, Petitioner still believes that BANA as well as Fay (and all defendants who had a hand in this "wrongful and negligent" treatment) should be held accountable for their non-compliance with both their "Consent Orders" and "Consent Judgment" – and subsequent sale to PRMF, when they had no right to do so. BANA should be held accountable covering all their wrongdoings from July 29, 2009, through December 28, 2015, where they purportedly exited with the filing of the Assignment of the DOT. Petitioner also advises here that subsequent to the denial of Appellant's *Petition for Rehearing*, she has filed further Complaints with Virginia's Office of the Attorney General's Predatory Lending Unit in an attempt to be included in the NMS that BANA neglected to solicit her for, in addition to both BANA's and US Trust's non-compliance with the IFR Consent Orders.

Petitioner should mention here that Trusts/PSAs are suppose to register with the Securities and Exchange Commission (SEC) and PROF-2013-S3 Legal Title Trust, by US Bank National Association has never done so. **Again, why move from a REMIC to PROF in 2013, but perhaps to conceal something? Perhaps, a payoff?**

As can be seen from the Appendix to this Petition, Petitioner has had to fight this cause on a number of issues, for nearly ten years, and in a number of courts and her case is very complex. She fears she cannot do it justice especially with the limitation of a 40-page Petition. However, it is hoped that this Honorable Court will assist her and she will finally receive some justice, not only for herself, but for the good citizens of this country.

Plucked in part from Appellant's second *Petition for Rehearing*, pages 2-3:

> "First, Appellant does not understand how the Supreme Court of Virginia has made the determination that "there is no reversible error in the judgment complained of."
>
> If that Court was referring to the Errors in Appellant's Petition for Appeal regarding "due process" and Appellant's Constitutional rights, this Court should address how it is "right" that a dismissal of a Complaint on Demurrer or Pleas in Bar should be granted where:
>
> > "A claim is plausible if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and if there is "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The Court restated the substance and application of the *Bell v. Twombly* test for the sufficiency of pleadings: "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."
>
> Clearly, Plaintiff has pled with "factual" evidence (exhibits) that drew a reasonable inference that the defendants were liable for the misconduct alleged.
>
> Plaintiff filed her initial Complaint on December 4, 2015 (US District Court), to stop the foreclosure from proceeding on December 7, 2015, and challenging the validity of Title to her Property and the conduct of the Trustee. In two cases, *Ramos v. Wells Fargo Bank*, 770 S.E.2d 491 (Va. 2015), and *Mathews v. PHH Mortgage Corp.*, 724 S.E.2d 196 (Va. 2012), the Supreme Court of Virginia confirmed that any challenge to a foreclosure based on the pre-foreclosure conduct of the lender must be filed before the foreclosure sale has taken place, if the borrower wants to avoid a foreclosure

> sale. Once the foreclosure has taken place, a property owner can sue the lender for damages based on the claim of a wrongful foreclosure.
>
> In this case, Appellant filed her first suit before the foreclosure took place and the Trustee Samuel I. White ("SIW"), who is supposed to act as an impartial administrator in a "nonjudicial foreclosure" and who is clearly not supposed to advocate for either side, and must use diligence and fairness when conducting the foreclosure, violated the terms of the Deed of Trust ("DOT") by failing to give all proper Notices, including the right to file suit and ignoring Plaintiff's filing in the U.S. District Court, and further violations as detailed earlier, and proceeding with the foreclosure."

Thus, the lower court should have found this as "negligent and wrongful behavior" and found it as a "wrongful foreclosure," as Plaintiff had pled. The Supreme Court of Virginia in its de nova review should certainly have recognized this and held that the Dismissal of Plaintiff's Complaint based on *Demurrers* and *Pleas in Bar* was premature and should have found a "wrongful foreclosure" as a "reversible error" in the judgment complained of. As pled in Error 4, the lower court erred in the interpretation of the Complaint and the evidence presented in the Exhibits thereto and, accordingly, by dismissing Plaintiff's case had violated Hampton's rights to procedural due process.

As stated in Error 1 regarding the Court's failure to address or rule on the *Requests of Judicial Notices*:

> "Due process in an administrative hearing includes a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law. Administrative convenience or necessity cannot override this requirement." *Swift and Co. v. United States*, 7 Cir., 1962, 308 F.2d 849; *Hornsby v. Allen*, 5 Cir., 1964, 326 F.2d 605.

Under due process laws, Hampton was entitled to a fair trial, which she did not receive and was even denied a promised reply to Defendant's response regarding

the *Judicial Notices*, which were praeciped to be heard that day, entered into the court, but never addressed or ruled on.

The Court should have found that the dismissal of Plaintiff's Complaint was premature and based erroneously and solely on Defendants' *Demurrers* and *Pleas in Bar* and violated her right to a fair trial, where there was no trial or cross-examination of witnesses or otherwise, further ignoring counts of the Complaint altogether.

Notably, Bank Defendant's suggestion that the "Consent Orders" were part of the National Mortgage Settlement, where clearly both Bank and Trust Defendants knew this was not true and Plaintiff was within her rights to bring suit against them for violation of their "Consent Orders" (IFR) and further Plaintiff fully pled for the mandated remedies in her Complaint and Exhs. 29-32. (*See* App. O read notes.)

Further, Trust Defendant's and the Court's **failure to address or rule on** Counts XI – Fraud with the IRS and Count XII – Unlawful Detainer, clearly should be ruled as a violation of due process. As a direct result of this failure and the Supreme Court of Virginia's decision to refuse appeal, the Unlawful Detainer in General District Court on November 14, 2018, awarded possession to PROF and on appeal set bond at $8,000, where clearly Hampton pled that title to her property was flawed beyond what is acceptable.

Requested in Plaintiff's *Judicial Notices* were the records from the Probate Court, which included the POAs submitted by SIW, which demonstrate that SIW did not have a valid POA with which to foreclose. Clearly, the Court failed to "accept

all allegations in the complaint as true and [must] draw all reasonable inferences in favor of the plaintiff." Again, the Court "blindly" or erroneously interpreted the Exhibits, as particularly noted in Plaintiff's *Motion for Reconsideration* and *Memorandum in Support of*, where Plaintiff gave the court clear interpretation of each count (App. W).

Quoting further, from *Plaintiff's Memorandum in Support of Motion for Reconsideration*, filed January 10, 2017, p. 10, as to her *Requests for Judicial Notices* and the SEC:

> "Finally, according to Virginia Code §55-59(9) "**The party secured by the deed of trust, or the holders of greater than fifty percent of the monetary obligations secured thereby, shall have the right and power to appoint a substitute trustee or trustees.** *The instrument of appointment shall be recorded in the office of the clerk wherein the original deed of trust is recorded prior to or at the time of recordation of any instrument in which a power, right, authority or duty conferred by the original deed of trust is exercised.*" (emphasis added) On this final note, Plaintiff Requested for Judicial Notice from the Security and Exchange Commission (SEC) to give clear evidence that PROF was never registered with the SEC and thereby was not secured by the DOT and had no powers to assign, which was done in their Assignment to Trustee White." (*further italic emphasis added*)

The Supreme Court of Virginia should have recognized the Circuit Court's "blind" or "erroneous" interpretation of the exhibits as further detailed below.

First, with regard to a DOT: A deed of trust has two purposes, which are "to secure the lender-beneficiary's interest in the parcel it conveys and to protect the borrower from acceleration of the debt and foreclosure on the securing property **prior to the fulfillment of the conditions precedent it imposes.**" *Mathews v. PHH Mortgage Corp.*, 724 S.E.2d 196, 200 (2012).

Further to the DOT, there is nothing therein that would allow the Lender or subsequent Holders of the Note secured by the DOT to auction off Plaintiff's loan to a hedgefund prior to any foreclosure. This was clearly done as Plaintiff uncovered that "sale by auction" by tracing the POA's signers in BANA's Assignment of Deed of Trust to PROF (Exh. 56), dated December 17, 2015, and filed December 28, 2015, in the court's Recorder of Deeds, "after foreclosure." Said POA was pled for in Plaintiff's *Requests of Judicial Notices* (App. Z) and submitted to the court at the hearing of January 3, 2017, as further evidence to "connecting the facts." **How could this Assignment of the DOT be held valid where BANA no longer owned nor transferred to the new owner the power under the DOT?**

Clearly, the Substitution of Trustee from PROF via its attorney in fact Fay Servicing (without noting a POA), prepared by SIW and assigning SIW as Trustee, submitted to the court's Recorder of Deeds November 10, 2015 (Exh. 54), should be held invalid, since PROF did not own the Note, nor did BANA since they sold the same as evidenced in the POA submitted with the Judicial Notices. **Again, how could this Substitution of Trustee be held valid where PROF nor BANA no longer owned the loan? And PROF was never secured by the DOT and thus had no right to assign a Substitute Trustee or foreclose?**

The lower court should have found predatory lending, a *void ab initio* Deed of Trust and the "Cloud on Title" evident requiring a "Corrective Affidavit," and clearly with the violation of the Consent Orders, a "wrongful foreclosure" had

occurred and more particularly, Plaintiff had exercised her rights to file suit before foreclosure and challenged Defendants' on their right to Title.

As to Predatory Lending, CW violated VA Code Sec. 159.1-200 entitled "Prohibited Practices" re deception, fraud, etc. with Consumer Transactions as well as fraud in the inducement. This is a well known fact and pled in the Complaint.

As to Counts I & II, the Court should have found a cause of action for fraud based upon the Exhibits submitted and Plaintiff's *Request for Judicial Notices* which further supported the connecting of the facts.

From 5A Charles A. Wright et al., Federal Practice and Procedure: Civil Sec. 1298 (3d ed. 2013):

> [I]t is inappropriate to focus exclusively on the fact that Rule 9(b) requires particularity in pleading the circumstances of fraud. This is too narrow an approach and fails to take account of the general simplicity and flexibility contemplated by the federal rules and the many cases construing them; in a sense, therefore, the rule regarding the pleading of fraud does not require absolute particularity or a recital of the evidence, especially when some matters are beyond the knowledge of the pleader and can only be developed through discovery.

As to Count II Alteration of the DOT, the Court should have found as *void ab initio* as it was clearly altered after Plaintiff signed the same to conceal the terms of the mortgage which was a re-finance. Plaintiff was not privy to the "who, when, where and why" since she was denied Discovery. Further, Exh. 5, shows clear evidence of fraud and the courts should have recognized the same. Also, since this assignment was filed May 25, 2006, with the Recorder of Deeds, this recordation should be held as "fraud on the court." As to damages, this cannot be calculated until possession is decided, but Appellant still possesses.

Further to Count II, clearly shown in Exh. 6-A is the alteration of the description of the property, p.13 thereof, which is required to state verbatim the description of the property as identified in the Re-recorded Deeds of Trust identified in Exhs. 3-B and 3-C, which they failed to do. Here the Court's confusion indicated she failed to compare Exh. 6-A with that of Exhs. 3-B and 3-C.

As to the requirements for a "Corrective Affidavit" to correct the Deeds on file with the court's Recorder of Deeds, as previously pointed out in Plaintiff's complaint, one only needs to compare the description of the DOT (Exh. 6-A) with the Deed of Foreclosure ("DOF") filed May 13, 2016 (new Exh. 60). Here SIW attempts to correct the description in the DOF, but fails as this description can only be corrected via a "Corrective Affidavit" approved by this Plaintiff, who found it erred and such "Corrective Affidavit" has yet to be filed with the Recorder of Deeds. Further, a DOF must state verbatim the description of the property conveyed in the DOT, which clearly SIW failed to do, which should further invalidate the DOF. The "Corrective Affidavit" must be done on all Deeds including the Deed of Sale, which only this Plaintiff can approve.

As to the court's ruling on Count VI, it should be obvious to this Court that clearly the lower court misunderstood the "Consent Orders" or had no expertise in such matters, and, if she had permitted the *Judicial Notices*, perhaps she would have understood better with the full record before her. Plaintiff in her Complaint made it clear that had BANA complied with first Fannie Mae's mandated Guidelines to solicit and offer the HAMP or, thereafter, the mandates of the

Consent Order with OCC/US Treasury, Plaintiff would never had need to file suit. As to BANA's successor, US Bank NA on behalf of its Trusts, were also mandated under their Consent Order to offer the HAMP modification and, if foreclosed on and still in the hands of the Trust, they were mandated to RESCIND foreclosure and offer the HAMP modification as approved. Both Consent Orders have been violated and the "remedy of a suit" was permissible under the same for non-compliance.

It was made clear to Hampton that she would not be afforded the opportunity to respond regarding her *Pleas for Requests of Judicial Notices*, as they particularly supported her claim of predatory lending and a *void ab initio* DOT, and in further support of her Complaint and her claims therein and this is quite obvious from a review of the transcript.

Hampton did not understand why she was being deprived of her Requests, when clearly under Code of Virginia §8.01-386.

> "Judicial notice of laws. A. ... the court **shall** take judicial notice thereof whether specially pleaded or not. And B. The court, in taking such notice, may consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject." (*emphasis added*) (cited in Plaintiff's Request of Judicial Notices, page 2; transcript page 17, line 7 to page 18, line 1; and Plaintiff's Motion for Reconsideration, page 3).
>
> As noted on the final Order of the court, Hampton objected thereto:
>
> "The result of Plaintiff's inability to obtain the information necessary to satisfy the stringent requirements of Rule 9(b), the dismissal of the claim, is a material injury[ing] constituting a deprivation of Plaintiffs' right to procedural due process."
>
> As submitted on page 17 of Appellant's subsequent *Petition for Appeal*:

> Hampton further believes that "had" the court accepted the *Requests for Judicial Notices*, and the proffered "Bill of Particulars," the burden of proving a cause of action would have lifted and the cause of action been exposed in further detail. ...
>
> Also, Defendants failed to offer anything in the way of proof save for Trust Defendant's stating that they had the Note and it matched Plaintiff's signature. (January 3, 2017, tr. p.5, ll.3 – 10) Hampton had in Judicial Notice #2 challenged that Note as "forged" and was prepared to subpoena a forensic expert at trial.
>
> Appellant wishes to note here that in her second *Petition for Appeal*, she included "Error 5" as to PROF's non-appearance therein. Although Appellant provided in her first Appeal a proffered "Bill of Particulars" (reducing her 154 page Complaint into 11 pages), **Hampton could not provide the same herein, given the limitation of this 35-page document.** However, it should be obvious that such a reduction should have been easily interpreted and shown a clear cause had her proffered "Bill of Particulars" been accepted." **(emphasis added)** (Transcript App. X)

In Appellant's return to the Supreme Court of Virginia, she filed *Motion for Consideration of the 'Bill of Particulars,' as Proffered* (App. Q) which could not fit in that 35-page further appeal, which was subsequently denied (App. P).

WHEN DUE PROCESS ISSUE WAS RAISED

In the lower courts, in Hampton's *Second Amended Complaint*, the issue of Due Process was first raised in her opening statements bridging pages 4-5:

> "Plaintiff wishes to reiterate here that she sincerely feels that it would be an obstruction of justice not to litigate and proceed to discovery and mediation and, if this case were to be dismissed in its entirety, that dismissal would be a material injury constituting a deprivation of Plaintiff's rights to procedural due process."

The issue of Due Process was raised again by Hampton in Plaintiff's *Opposition to Demurrer and Plea in Bar to Second Amended Complaint* filed by Bank Defendants and her *Plea for Request of Judicial Notice*, filed October 11, 2016, repeating here as follows:

As taken from William & Mary Bill of Rights Journal [Val. 22:1221 2014] pp. 1245-1246, Julie A. Cook, J.D. Candidate, 2014, William & Mary School of Law; B.H., 2011 *magna cum laude*, Clemson University. "Consider the following:

> In light of the recent decision announced by the Supreme Court of the United States in *Ashcroft v. Iqbal*, the pleading standard established under Federal Rule of Civil Procedure 8(a)(2) requires that, in order to survive a motion to dismiss, a complaint must contain sufficient factual matter to 'state a claim to relief that is plausible on its face.' With respect to pro se plaintiffs, Federal Rule of Civil Procedure 8(a)(2) is unconstitutional because it violates an individual's procedural due process rights by requiring a pleading standard that a layperson finds difficult to satisfy. ...
>
> The argument presented in this Note is analogous to the deprivation of pro se litigants' right to due process. Just as pro se litigants lack the information and expertise necessary to pass muster under the standard of Rule 8, resulting in the premature dismissal of their claims, plaintiffs asserting negligent misrepresentation claims may not have the tools necessary to satisfy heightened pleading. The lack of uniformity in courts in applying a pleading standard, as demonstrated by the current federal circuit court split, prevents plaintiffs from receiving adequate notice of what is sufficient to avoid dismissal. Courts conflation of the elements of negligent misrepresentation with fraud also contributes to the dismissal of claims that might otherwise have merit. Finally, the inconspicuous elements of negligent misrepresentation, when paired with the requirements of heightened pleading, present an undue burden on plaintiffs who, at the outset of a claim, are unable to utilize the tools of discovery. ... a material injury constituting a deprivation of plaintiff's rights to procedural due procsss."

Still further, Hampton in her *Request of Judicial Notices* (App. Z) filed January 3, 2017, and submitted to the court and counsel of record, pursuant to Virginia Codes §8.01-386 and §8.01-389 and further Virginia Rules of Evidence Rule 2:104(b):

> "Under Virginia Rules of Evidence, approved and promulgated, Supreme Court of Virginia, September 12, 2011, Rule 2:104 Preliminary Determinations, (b) Relevancy conditioned on proof of connecting facts: Whenever the relevancy of evidence depends upon proof of connecting facts, the court may admit the evidence upon or, in the court's discretion, subject to, the introduction of proof sufficient to support a finding of the connecting facts.

Further, under Code of Virginia §8.01-389. Judicial records as evidence; full faith and credit; recitals in deeds, deeds of trust, and mortgages; "records" defined; certification, A. The records of any judicial proceeding and any other official records of any court of this Commonwealth shall be received as prima facie evidence provided that such records are certified by the clerk of the court where preserved to be a true record, through F. The certification of any record pursuant to this section shall automatically authenticate such record for the purpose of its admission into evidence in any trial, hearing, or proceeding.

Still, further, under Code of Virginia §8.01-386. Judicial notice of laws (Supreme Court Rule 2:202 derived in part from this section). A. Whenever, in any civil action it becomes necessary to ascertain what the law, statutory or otherwise, of this Commonwealth, of another state, of the Unites States, of another country, or of any political subdivision or agency of the same is, or was, at any time, the court *shall* take judicial notice thereof whether specially pleaded or not. And B. The court, in taking such notice, may consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject." (*emphasis added*)

Both at the hearing of January 3, 2017, in response to the *Order* thereon, and in Hampton's *Motion for Reconsideration* and *Memorandum in Support* thereof, filed January 10, 2017, with the circuit court, again she clearly raised the "Due Process" issue. Further in her *Motion for Reconsideration*, she also raised her rights to a ruling on her *Pleas for Requests of Judicial Notices*, as well as her rights to those Requests, and further issues that were not addressed at hearing. Although Hampton pled for reconsideration, giving the court an opportunity to rule intelligently on the due process issues, the lower court denied the *Reconsideration*.

Clearly, Petitioner herein has been denied due process by not only the Circuit Court, but also by the Supreme Court of Virginia.

From *The Making of Modern Law: U.S. Supreme Court Records and Briefs, 1832-1978*, containing the world's most comprehensive collection of records and

briefs brought before the nation's highest court by leading legal practitioners – many who later became judges and associates of the court, Hampton wishes to draw particular attention to portions of the following Jurisdictional Statement.

In the matter of *Flora Daun Fowler, Appellant v. Maryland State Board of Law Examiners*, No. 77-801, 434 U.S. 1043, 98 S.Ct. 844, 54 L.Ed2d 793 (1977), quoting from her Jurisdictional Statement:

> "The federal constitutional provisions involved in this appeal are found in the United States Constitution, Amendment XIV, Section 1:
>
> > 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
>
> ...
>
> Where federal action is concerned: 'The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes with the "liberty" and "property" concepts of the provisions of the Fifth Amendment to the Federal Constitution that no person shall be denied liberty or property within due process of law. *Green v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400'
>
> The Fourteenth Amendment protects liberty or property from state action lacking due process provisions.
>
> ...
>
> The nature of notice and hearing was elaborated upon in the case of *Hornsby v. Allen*, 326 F.2d 605.
>
> > 'Due process in administrative proceedings of a judicial nature generally requires conformance to fair practices of Anglo-Saxon jurisprudence, and this is equally equated with adequate notice and fair hearing – requirements that parties be allowed opportunity to know opposing parties' claims, to present evidence to support their contentions, and to cross-examine opposing parties' witnesses, but strict adherence to common law rules of evidence at hearing is not required.'

...

The Fourteenth Amendment demands that a state treat all citizens alike, unless there is a sufficient reason to treat them differently. The concept of equal protection has been traditionally viewed as requiring uniform treatment of persons standing in the same relation to the action of government. The Equal Protection Clause requires that state laws be applied uniformly to situations which cannot be reasonably distinguished.

...

For the reasons set forth in this Jurisdictional Statement, the questions presented herein being substantial and of public importance, should be heard and decided on this appeal."

Further to *Hornsby v. Allen*:

> "The role of the courts is to ascertain the manner in which this determination was or is made accords with constitutional standards of due process and equal protection." And "It follows that the trial court must entertain the suit and *determine the truth* of the allegations." *(emphasis added)*

The integrity of the rule of law is at stake, as the most basic of our due process rights are involved.

It is a fundamental principle that one has the right to protect his or her property from its unlawful taking by another. Consistent with the United States Constitution, the Virginia Constitution states:

> [A]ll men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Va. Const., Article I, §1. It further states that "no person shall be deprived of his life, liberty, or property without due process of law." Va. Const., Article I, §11. The federal government, the states, and the courts of all levels, are tasked with the daunting task of protecting the property rights of citizens from theft, conversion, fraud, and otherwise unlawful "takings." One's property rights can be protected

through criminal proceedings, through civil proceedings, and sometimes both. This is a civil action filed to protect Hampton's property rights *from the unlawful taking of those rights* by either Bank Defendants or Trust Defendants.

REASONS FOR GRANTING THE PETITION

The Trial Court erred in not accepting the further evidence as required under Va. §8.01-386 and as pled in the Requests of Judicial Notices

> The refusal of the Trial Examiner to receive and consider competent and material evidence which could have been offered after a reasonable opportunity to meet the charges amounts to denial of due process, and the fact that the Board had reached, or might have reached, no different conclusion had the rejected evidence been received is entirely beside the point. *N.L.R.B. v. Burns*, 8 Cir., 1953, 207 F.2d 434.

The Judicial Notices fully supported the allegations and "connected the facts" and evidence of the complaint as to the "continuous negligent and wrongful treatment" placed on Hampton since the initial loans in 2005, but the court wrongfully failed to accept. (January 3, 2017, tr. p.38)

The Trial Court erred in not accepting Hampton's proferred "Bill of Particulars

> "[U]nder Rule 3:7, 'a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.' ... Still, should this Court agree with the Defendants, this court may order a Bill of Particulars under Rule 3:7 and Plaintiff will comply." (Plaintiff's proffer at the hearing January 3, 2017) (App. Y)

Finally, Hampton submits her belief extracted from page 27 of *Petition for Appeal*:

> "First, the court should have permitted the "Bill of Particulars" proffered (January 3, 2017, tr. p.18, l.9 – p.19, l.3), together with the *Request of Judicial Notices*, (p.17, l.7 – p.18, l.1) and thereafter could have concluded that any "unascertainable cause" of action was difficult to obtain when multiple defendants are simultaneously negligent, ... Information about wrongdoing is often secret, and thus needs discovery to unearth the facts. This is particularly true with the elements of fraud that only the defendants

were privy to. The court, therefore, should have sought those truths, but instead sustained the Demurrers without due process to Hampton. (beginning p.38)"

And still further from page 29:

> "A further reason for accepting the proffered "Bill of Particulars" is found in the court's final ruling in its decision to dismiss (p.46) as the complaint failed to meet the pleadings standard; was unable to find a cause of action; being exhaustively litigated for a number of years *(13 months and the Second Amended Complaint was new as to all counts and heard within about three months of filing)*; where foreclosure had concluded; and was an inappropriate use of court's and parties' resources – Hampton finds fails procedural due process. *(emphasis added for clearly erroneous statement)*

Appellant offered this "*Bill of Particulars," as Proffered* in order to ensure that the record was more complete and to enable the Court to evaluate and resolve this case.

The Trial Court erred in sustaining the Demurrers and Plea in Bar and erred in the erroneous interpretation of the Complaint and evidence presented in the Exhibits

> "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999). ... A claim is plausible if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and if there is "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The Court restated the substance and application of the *Bell v. Twombly* test for the sufficiency of pleadings: "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."

As to the Statute of Limitations (Code of Virginia §8.01-243(C)(2)):

> "[T]hat the statute runs from the last date of the continuous negligent treatment is just and equitable. A rule to the contrary often results in miscarriage of justice and penalizes a patient who, under continuous treatment, assumes that due care and skill will be exercised." *Farley v. Goode*, 219 Va. 969, 252 S.E.2d 594, 600 (1979) (*quoting Hotelling v. Walther*, 169 Or. 559, 130 P.2d 944 (1942))."

The court should have granted the *Judicial Notices* and any further evidence supporting the facts, particularly before any demurrer was ruled on, since there was clear evidence in the Exhibits and in the Complaint and pled for in the *Judicial Notices* that clearly provided more than a "sheer possibility that defendants had acted unlawfully," and that evidence should have changed the lower court's decision. By sustaining the Defendants' Demurrers and Pleas in Bar, the court failed their duties regarding procedural due process.

As is evident from the January 3, 2017, transcript beginning page 38 with the court's rulings, clearly in rendering her decision, the court failed to consult the correct exhibits, which proved predatory lending, fraud, a *void ab initio* DOT and a "Cloud on Title" from the Property description requiring a "Corrective Affidavit," referenced previously.

It boggles Petitioner's mind that these banks fight so hard to "conceal their wrongdoing" when my Property is only worth the land value of $195,000, and where their expenses to litigate surely exceed that value. **Wouldn't it have been cheaper to comply with the Consent Orders?**

The Trial Court erred in accepting Trust Defendants made appearance for PROF through Fay Servicing LLC, as their attorney-in-fact, granting relief from Hampton's filing for Default Judgment and further to the Amended Final Order

As can be seen in Plaintiff's proposed *Final Order* and *Objections to the Amended Final Order*, Plaintiff clearly does not agree to PROF having entered into any suit that Plaintiff has brought in any court, and thus creates Error 5. (App. R) Whether this Court accepts Fay as attorney in fact as appearing on behalf of

PROF/US Bank, I am eager to finally see their Financial Interest Disclosure Statement and pray that they reflect all parties at the time of foreclosure through date. Hampton's own discovery shows evidence that PROF was not secured by the Deed of Trust, either through their Pooling and Servicing Agreement, registration in the Securities & Exchange Commission or Assignment. **Does PROF truly exist?**

Although Petitioner is not privy to all the case filings, it appears that *Jacobson v. Bayview Loan Servicing, LLC*, 371 P.3d 397, 383 Mont. 257 (2016) bears a resemblance to mine.

> "What is unique and instructive about this decision from the Montana Supreme Court is that it gives details of each and every fraudulent, wrongful and otherwise illegal acts that were committed by a self-proclaimed servicer and the "defective" trustee on the deed of trust. ...If you think about it, you can easily see how this case represents the overall infrastructure employed by the super banks. It is obvious that all of Bayview's actions were at the behest of Citi, who like any other organized crime figure, sought to about getting their hands dirty. The self proclamation inevitably employs the name of US Bank whose involvement is shown in the case to be zero. Nonetheless the attorneys for Bayview and Peterson sought to pile up paper documents to create the illusion that they were acting properly. ... 38. False representations concerning 'US Bank, Trustee' – a whole category unto itself. (the BOA deal and others who 'sold' trustee position of REMICs to US Bank)"
> (By Neil Garfield, livinglies.wordpress.org | January 20, 2017)

However, nowhere in my search have I found a case as full of torts involving Predatory Lending, fraud in assignments, material alteration of the DOT making it *void ab initio*, improper assignments and notices of the DOT, wrongful foreclosure, wrong party foreclosing, violations of HUD requirements, violations of federal HAMP programs, violations of Fannie Mae Guidelines, violations of Consent Orders with the OCC/Treasury, and failure to solicit borrowers who qualify for the NMS.

It would seem that in light of the bad practices of these servicers, including Fay on behalf of PROF/US Bank, uniform non-foreclosure rules should be developed to protect citizens nationwide from the unlawful taking of their homes in violation of their Constitutional rights and without due process. In the recent rulings on *Obdusky v. McCarthy & Holthus LLP*, Case No. 17-1307 (March 20, 2019), if the 1977 Fair Debt Collection Practices Act were not passed to prevent these debt collectors from engaging in abusive or predatory practices regarding real property, then some law should be created to protect citizens from such abuse. Obviously, I am such a victim to this crime and no doubt that there are millions like myself, who do not deserve this abuse. It is time for the courts to stand up to these TBTF banks and/or their servicers. The solution is always uniformity and clarity must be achieved. Perhaps the better solution would be to bar non-judicial foreclosures altogether until our faith in home ownership can be restored.

CONCLUSION

Petitioner respectfully request certiorari be granted for this Petition, in order that this Court may restore and protect citizens' Constitutional rights as they were created to be. I trust in God and this Superior Court.

The petition for a writ of certiorari should be granted.

Dated: May 1, 2019

Respectfully submitted,

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